THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10089 of 2007

10.7.2007

Between:

Magbul Wahab, S/o.Abdul Karim

… Petitioner

AND

State of Andhra Pradesh, represented by its District Collector, Guntur, Guntur District

And others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10089 of 2007

ORDER:

The petitioner filed the writ petition seeking a writ of Mandamus declaring the action of the respondents in trying to dispossess him from the land admeasuring 9922 Sq.yards in survey No.520/2 situated at Chowdavaram village of Guntur Rural Mandal, as illegal and arbitrary. He also sought a consequential direction to the respondents not to evict him.

The case of the petitioner is as follows. He purchased the subject land under registered sale deed dated 20.5.1996 from Swarna Adivi Reddy, who in turn had purchased the property from T.Veeraiah under another registered document. Petitioner also made enquiry before purchasing the property. Petitioner along with others approached the fourth respondent Gram Panchayat and got a layout approved vide resolution dated 10.1.2007 after paying a sum of Rs.1,63,200/- towards security deposit and Rs.20,000/- towards layout fee. He also asserts that the amount paid by him towards layout fee remitted to the account of the Director of Town Planning, Hyderabad, on 21.3.2007. It is the allegation of the petitioner that staff of the third respondent came to the petitioner's land and informed the neighbours that steps are being taken by the respondents to resume the land purchased by the petitioner as it is assigned land. The petitioner and others then made enquiries in the office of the third respondent. They came to know that without issuing notice under Andhra Pradesh Assigned Land (Prohibition of Transfers) Act, 1977 (the Act, for brevity) and Andhra Pradesh Assigned Land (Prohibition of Transfers) Rules, 2007 (the Rules, for brevity), the respondents are going to dispossess them. Therefore, the present writ petition is filed, contending that as no notice is issued they would not be able to explain their position and that any highhanded dispossession would be illegal and arbitrary.

The writ petition was filed in vacation court and this Court granted *status quo* on 09.5.2007 while directing learned Assistant Government Pleader for Revenue (General-A) to file counter.

Accordingly, a counter affidavit is filed by the third respondent. It is stated that as per the resettlement register, land comprised in survey No.520/2 is Government poramboke land, classified as assessed waste. The same was assigned in favour of landless poor persons including one Sri Bandarupalli Sambasiva Rao in January 2007. An inspection was conducted to know whether the Government poramboke lands assigned are in actual possession of the assignees. It was noticed that the land in survey No.520/2 is in possession of third parties. Therefore, the action was initiated under the provisions of the Act and notice was issued in Form-I of the Rules. Notice was served on 26.2.2007 but no explanation was submitted. Therefore, the Tahsildar issued proceeding in Rc.No.412/2007-D, dated 20.4.2007, canceling the assignment and ordering resumption of the land to the Government. A copy of the proceedings of the Tahsildar is also annexed to the counter affidavit.

Learned Counsel for the petitioner submits that even when action is initiated for contravention of Section 3(2) of the Act as revealed under Rule 3 of the Rules, it is necessary to issue notice in Form-II to the persons who have acquired assigned lands. In the absence of such notice, orders of resumption passed by the Tahsildar on 20.4.2007 behind back of the petitioner is unsustainable.

The counter affidavit does not deny nor the learned Assistant Government Pleader disputes that no notice in Form-II is issued to the petitioner before passing the resumption order. Learned Assistant Government Pleader submits that pursuant to the resumption order passed by the Tahsildar, possession was taken in April 2007 itself. In a situation like this, this Court at this stage is not inclined to set aside the order of the Tahsildar resuming the land, as the same is not specifically challenged. Learned Counsel for the petitioner does not dispute that against the order of resumption passed by the Tahsildar under Section 4 of the Act, appeal would lie to the Revenue Divisional Officer (RDO), under Section 4-A of the Act. Therefore, in the facts and circumstances of this case, this would be appropriate redressal mechanism for the petitioner. Liberty is given to him to file appeal within a period of ten days from the date of receipt of a copy of this order. As and when such appeal is filed, the RDO may pass appropriate orders. There shall be *status quo* as on today with regard to possession of the land. This Court also observes that the petitioner shall not create any third party rights nor transfer nor alienate the land in favour of third parties.

The writ petition, with the above observations, is accordingly disposed of. No costs.

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(**V.V.S.RAO, J**)

July 10, 2007

NOTE:
Dispatch order copy by 16.7.2007.
(By order) YS